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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

M. A. McMULLEN,
Counsel for Petitioner.

GEO. L. BROWN,
CYRIL E. POGUE,
Of Counsel.

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HUGH RICHMOND.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

This is an action at law, originating in the United States District Court, Southern District of Florida, and was based upon a diversity of citizenship. The cause of action was based upon bonded obligations issued by the City of Largo, and petitioner defended upon the ground that it had no

part in the issuance of said obligations, and that the same were null and void. A stipulation of facts in lieu of testimony was filed in the cause (R. 30), and from a judgment holding petitioner liable as a successor to the issuing municipality, petitioner appealed to the Circuit Court of Appeals, Fifth Circuit. Judgment sustained (109 F. R. 2d 740).

The facts briefly stated are as follows:

The petitioner was incorporated in 1913 as the TOWN of Largo, embracing 360 acres of land (App. 1 & 2). In 1925, the Florida Legislature passed two Special Acts, the purpose of which was to abolish the Town and create the CITY of Largo, embracing the territory of this petitioner and other land to the extent of 4,480 acres (App. 3 & 4). The new municipality, City of Largo, exercised jurisdiction over all the territory, put in numerous improvements and issued the obligations upon which this suit is based. Afterward, in 1927, certain citizens instituted *quo warranto* proceedings in which a final decision was rendered on July 11, 1933, by the Supreme Court of Florida, holding that the entire act which undertook to create the City of Largo was void as violative of Section 12, Declaration of Rights, Constitution of Florida, and directed an ouster "As to entire annexed territory" (110 Fla. 21, 149 So. 420). Upon rendition of this decision and the judgment of ouster, the "City" officials retired, taking their records, etc., with them (R. 35); thereupon the citizens of the territory originally embraced in this petitioner elected officers and resumed municipal function as the TOWN of Largo under its original Charter (App. 1 & 2), and has, at all times, disregarded all the acts, obligations and liabilities of the City of Largo (R. 35).

No election was held to authorize the issuance of the bonds, but the bonds recited, in effect, that all things necessary to be done had been done, and the Legislature after-

ward validated said bonds, by Special Acts, as obligations of the City of Largo.

Petitioner contends that the bonds, as such, are void because the issuing municipality never legally existed, either *de jure* or *de facto*, because the Legislature was without power to create such a municipality, and, further, because the bonds were issued without a vote of the freeholders (R. 30), and that the Legislature could not validate a bond which was absolutely void.

(See *Hillsborough County* v. *Temple Terrace Assets Co.*, 149 So. 473, 111 Fla. 368, and numerous other authorities.)

Petitioner also contends that the court erred in holding this petitioner to be a successor to the City of Largo, because this petitioner succeeded to nothing belonging to the City of Largo except a small part of the improvements installed by the City in the territories of this petitioner (R. 35).

II.

Reasons Relied On for the Allowance of the Writ.

1. The original decision of the Circuit Court of Appeals was rendered February 17, 1940, after which a petition for rehearing was filed and denied by the Circuit Court of Appeals, without opinion, on March 15, 1940; therefore, this petition is timely under the rules of this Court.

2. The decision rendered in this cause is in conflict with applicable decisions of the Supreme Court of Florida, construing the Constitution of Florida, the local law under which the cause of action arose, and other similar laws in this State.

3. The effect of the decision and judgment is to hold this petitioner liable for the debt of another, and will deprive petitioner of its property without just compensation, in vio-

lation of Section 12 of the Bill of Rights, Constitution of Florida, and Article 14 of the Amendments to the Constitution of the United States.

4. The foregoing questions, as points of law, were raised in the lower court in a Motion to Strike the Bill of Complaint (R. 17), and were presented to the Appellate court (R. 50-51), and again in a petition for rehearing (R. 60-64); also they were presented as matters of fact, and as a defense in petitioner's answer to the Bill of Complaint (R. 19-29), and, in point of fact, were proven by stipulation of counsel (R. 30).

WHEREFORE your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Fifth Circuit, said court to certify and send to this Court a full and complete transcript of record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket #9235, *Town of Largo in Pinellas County, Florida, Appellant,* v. *Hugh Richmond, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States and that the judgment herein of the said Circuit Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated June 6th, 1940.

TOWN OF LARGO,
IN PINELLAS COUNTY, FLORIDA,
By M. A. MCMULLEN,
As Counsel for Petitioner,
Clearwater, Florida.

GEO. BROWN,
CYRIL E. POGUE,
Of Clearwater, Florida,
Of Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion in the Circuit Court of Appeals of the Fifth Circuit (R. 55) is reported in 109 Fed. Reporter, 2d Series, Page 740. Judgment was entered February 17, 1940 (R. 58). Petition for rehearing was denied by order entered March 17, 1940 (R. 65).

II.

Jurisdiction.

1. The date of the judgment to be reviewed was filed in the United States District Court in and for the Southern District of Florida, Tampa Division, April 3, 1939 (R. 38). Order denying petition for rehearing was filed in the United States District Court, Southern District of Florida, Tampa Division, June 24, 1939 (R. 42).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 (a) of the Judicial Code, 28 U. S. C. A. Section 357 (a).

3. The jurisdiction of this Court arises by reason of the fact that the petitioner has been deprived of its inalienable rights under Section 12 of the Declaration of Rights of the Constitution of Florida. (See *State ex rel. Davis* v. *City of Largo*, 110 Fla. 21, 149 So. 420.) The effect of the decision and judgment of the Circuit Court of Appeals places upon this petitioner an obligation to pay the debt of another in violation of Article 14 of the Amendments to the Constitution of the United States.

III.

Statement of the Case.

The case is briefly stated under the heading "Summary Statement of the Matter Involved" contained in the petition for the Writ hereto annexed.

Specification of Errors.

1. The District Court and the Circuit Court of Appeals erred in holding that the City of Largo ever existed either *de jure* or *de facto* and for that reason there was no lawful authority for the issuing of the obligations involved in this suit.

2. The District Court and the Circuit Court of Appeals erred in holding the obligations involved in this suit valid in the absence of any showing that they were authorized by a vote of the freeholders in accordance with the provisions of the Legislative Act creating the City of Largo.

3. The District Court and the Circuit Court of Appeals erred in holding that the Town of Largo was or could be the legal successor to the City of Largo.

Introduction to Argument.

Under each of the foregoing heads, severally, we will undertake to show error in the decisions below, together with reasons why this Court should review such errors.

ARGUMENT.

First Assignment of Error.

The District Court and the Circuit Court of Appeals erred in holding that the City of Largo ever existed either *de jure* or *de facto* and for that reason there was no lawful

authority for the issuing of the obligations involved in this suit.

We respectfully call the Court's attention to the language of the Supreme Court of Florida in the case of *City of Winter Haven* vs. *A. M. Klemm & Son*, reported in 181 So. 153:

> "Where a statute establishing, or relating to, the jurisdiction and powers of a municipality, or a part of such statute, violates a command or a prohibition of the Constitution which relates, not merely to the form of the exercise of the legislative power in enacting statutes, as does Section 16, Article 3, but which relates to the nature or character of the subject matter of the enactment, as do Section 17, Article 12, Section 30, Article 3, and Section 7, Article 9, such statute, or a severable portion thereof so violating the Constitution, may be adjudicated to be invalid and inoperative *ab initio*, and, as in such cases the invalidity of the act or the portion thereof goes to the power of the Legislature to enact the law, and not merely to the form of the enactment, no rights or correlative obligations may arise under such invalid statute or invalid portion of the statute. Such invalid statute or part of a statute could not be validated by statute or by judicial decree. See *Brown* v. *City of Lakeland*, 61 Fla. 508, 54 So. 716; *Munroe* v. *Reeves*, 71 Fla. 612, 71 So. 922; *Weinberger* v. *Board of Public Instruction*, 93 Fla. 470, 112 So. 253; *Nuveen & Co.* v. *City of Quincy*, 115 Fla. 510, 156 So. 153, 94 A. L. R. 600; *State ex rel Nuveen* v. *Greer*, 88 Fla. 249, 102 So. 739, 37 A. L. R. 1298."

It will be noted from the foregoing language of our Supreme Court that there is a marked difference in the effect of a municipal Charter Act which is unconstitutional because of some formal defect, and one which is, as in the present case, unconstitutional because in violation of a positive constitutional limitation. In the latter case the

law is never effective, and, consequently, the municipality could not exist either *de jure* or *de facto* under such a law.

The Legislative Act under which the obligations involved herein were issued was, by the Supreme Court of Florida, in the case of *State of Florida ex rel. Davis, et al.*, v. *City of Largo*, 149 So. 420, declared to be unconstitutional and void as a whole, as violative of Section 12 of the Declaration of Rights, Constitution of Florida. The holding in that case was sustained and quoted at considerable length by the Supreme Court of Florida in *State ex rel. Davis, Attorney General* v. *City of Pompano*, 113 Fla. 246, 151 So. 485, and, as a matter of fact, the Court decided the last quoted case upon the authority in the *Largo* case, but it will be noted that, in the *Pompano* case, the act was declared to be unconstitutional only as to those lands which were not previously within the boundaries of the Town of Pompano, while in the instant case, the whole act was unconstitutional and void.

Bonds had been issued in the name of the City of Pompano, and the holders thereof instituted a proceeding to enforce the levy of a tax by the Town of Pompano to pay the same, *State ex rel. Harrington* v. *City of Pampano*, 188 So. 610, but the court held, in effect, that, since the act creating the City of Pompano was unconstitutional, as to all that territory not previously in the Town of Pompano, and, since the City of Pompano never existed, the bonds were necessarily void, quoting numerous authorities, including the pertinent ruling in the *Ocean Beach Heights* case, 302 U. S. 614, 82 L. Ed. 478, decided by the United States Supreme Court January 17, 1938. In this mandamus proceeding, the *Largo* case was referred to and cited as being in line with the Court's ruling in the *Pompano* case, and it was held that the bonds were issued without authority of law, that the Court was unable to extend the doctrine of *de facto*

and *de jure* municipal jurisdiction and powers to the facts in that case, and further quoted from McQuillan and other authorities that,

> "Want of power to issue is a defense even against bona fide holders, that the bonds are *ultra vires, i. e.* that the municipality had no implied or expressed authority to issue bonds for the particular purpose * * * likewise it is a defense even as against bona fide holders that the statute authorizing the issuance of the bonds is unconstitutional * * *"

On a rehearing in this case, it was brought out that part of the bonds were actually issued by the Town of Pompano under proper legislative authority, and, for that reason, they were sustained as against the Town of Pompano, but not against the territory which was unconstitutionally included.

Other questions were presented to the Court in that case concerning a lack of vote of the freeholders to authorize the issuance of the bonds, and will be discussed with reference to the second point in this brief. It is to be noted, nevertheless, that the *Pompano* case and the *Largo* case are identical; that the Legislative act creating the City of Pompano and the Legislative act creating the City of Largo were both declared unconstitutional because in violation of Section 12 of the Declaration of Rights, Constitution of Florida, and, in so far, as this Petitioner knows, among all the cases arising by reason of the extension of municipal boundaries during the late Florida land boom, these two cases were the only ones in that particular category, and, as has already been pointed out, the Supreme Court of Florida has several times differentiated between these cases and those numerous other cases in which the Court held a municipality to have existed as a *de facto* municipality.

Second Assignment of Error.

The District Court and the Circuit Court of Appeals erred in holding the obligations involved in this suit valid in the absence of any showing that they were authorized by a vote of the freeholders in accordance with the provisions of the Legislative Act creating the City of Largo.

While the bonds did not purport to be issued by this petitioner, Town of Largo, nor has there been any contention that petitioner had any part in the issuance thereof, nevertheless, it was held by the court below that petitioner was liable for said bonds as a successor to the maker thereof, *i. e.*, the City of Largo; however, the Charter of the Town of Largo (App. 1 & 2) likewise required a vote of the freeholders to authorize the issuance of bonds. If the Plaintiff were endeavoring to enforce his bonds against the special assessments, upon which they were predicated, then such a judgment would affect only persons who had benefited by the issuance and sale of said bonds, and such a judgment would be reasonable, but a judgment of the character entered herein, being a general obligation, would be, under the law, enforceable by a general tax levy against all persons alike, the majority of whom received absolutely no benefits from the expenditure of the money and had no notice (R. 38) that the bonds were to be issued or that the special improvements were to be paid for by any means other than special assessments. Quoting from *Horigan* v. *Heyward, Mayor, et al.*, 98 F. (2d) 433, text 435, the Court held,

> "* * * the judgment procured by Horigan on his bonds concludes all questions about their validity which might have been raised in that suit";

therefore it would seem that we must insist upon our constitutional rights in this proceeding, otherwise be deprived

of our property without just compensation, in violation of Section 12 of the Declaration of Rights, Constitution of Florida, and Article 14 of the Amendments to the Constitution of the United States.

The bonds recite that they are issued under the authority of Chapter 10761, which was the Charter Act of the City of Largo, and we wish to call the court's attention to the language of this Act (App. 3) under the authority of which the City of Largo undertook to issue these bonds. Section 2, Subsection (3) of said Act is, quoting briefly, as follows:

> "That the inhabitants of the City of Largo * * * shall have the right and power to issue bonds * * * upon the majority vote of all electors actually voting at any bond election provided that no elector shall participate in any bond election who is not a freeholder in said City and who is not otherwise qualified as a voter therein, provided that the maximum amount to which said City of Largo may bond shall not exceed 25 per cent of its assessed valuation."

Division (f) of said section further provides that:

> "The City of Largo shall have all power conferred upon municipalities by the general laws of the State of Florida when not inconsistent with the provisions of this act."

Section 21 provides the manner and method for making special improvements and levying the costs of such against the abutting properties or the properties benefited by such improvements. Section 26 of the City Charter provided:

> "The officers of the City of Largo shall have and exercise all powers conferred by general law upon municipal officers not inconsistent with the terms of this act."

There are other provisions in the Charter Act, under which these bonds were purportedly issued, having refer-

ences to the issuance of bonds based upon certificates of indebtedness under the general laws of the State, but it will be noted that, as a whole, the Charter does not authorize the issuance of bonds without a compliance with the provision with reference to an election authorizing the issuance thereof, and, in this connection, we would call the court's attention to Section 24, Article 3, of the Constitution of Florida, as follows:

> "The Legislature shall establish a uniform system of county and municipal government, which shall be applicable, except in cases where local laws or special laws are provided by the legislature that may be inconsistent therewith."

A ruling case in Florida construing this provision of the Constitution is *City of Appalachicola* v. *State et al.,* 112 So. 618, and, by reference to this case, and the authorities there cited, it will be observed that there was no authority under the law to issue these bonds without a vote of the freeholders.

The bonds recite that they were issued under the authority of Chapter 10761, Special Acts of the Legislature of Florida (City of Largo's Charter, App. 3) and further recite, in the usual phraseology, that all conditions had been complied with in the issuance of said bonds, but, in this connection, we call the court's attention to the language of the Supreme Court of Florida in *Olds* v. *Alvord,* 191 So. 434, whereby the Supreme Court of Florida held $300,000.00 of Special Improvement Bonds to be void, notwithstanding that said bonds carried such recitations and had been validated by decree of the Circuit Court. Quoting from that case the court held:

> "Under provisions in statute creating the town of Belleair Heights in 1923, requiring that issue and sale of bonds be ratified by a majority of electors who paid

taxes on their own property for the year prior to that in which election was held, where no provision for levy and assessment of taxes for the year 1923 was made, and bond election was held prior to July 1, 1924, public improvement bonds issued pursuant to the election were void ab initio.

"Where municipality was without power to issue bonds, a judicial validating decree could not confer validity on bonds issued by the municipality."

Also note the language of the court in the case of *City of DeLand et al.* v. *Moorhead et al.*, 119 So. 117, as follows:

"Under section 8, article 8, of the Constitution, municipalities in this state can exercise only such powers and prerogatives as are conferred on them expressly or impliedly by legislative enactment. Ferguson *v.* McDonald, 66 Fla. 494, 63 So. 915; Malone *v.* Quincy, 66 Fla. 52, 62 So. 922, Ann. Cas. 1916D, 208; Anderson *v.* Shackleford, 74 Fla. 36, 76 So. 343, L. R. A. 1918A, 139. Any doubt as to the alleged authority of a municipality to exercise any power should be resolved against its exercise."

In the *Belleair* case, above quoted, there had been an election, and the bonds had been validated by judicial decree, but the records of the proceedings, taken with the law, show conclusively that the election could not have been a valid one because, under the Charter of Belleair, the electors who participated were not qualified.

The record in this case (Stipulation of counsel, R. 30) will show that there was no attempt to have an election to authorize the issuance of these bonds, and that the general public were not notified that bonds were to be issued. The first issue of bonds, in the sum of $408,856.76, were never validated by judicial decree, and the other validating decrees were, of course, under the ruling in the *Belleair* case and various other cases in Florida, of no effect.

Herein, with reference to the first proposition involved, we quoted at length the language of the Supreme Court of Florida in *State ex rel. Harrington* v. *City of Pompano*, 188 So. 610. In that case, text 630-631, after quoting the pertinent parts of the Charter of the City of Pompano the court held, in effect, that, because certain of the inhabitants of the territory had not voted on the bond issue they could not be charged with the payment thereof.

In the instant case it will be noted that, under the Charter of the City of Largo, the bonds should have been authorized by a vote of the free-holders qualified as voters in the City. If there had been any attempt to hold an election, the question of who was qualified to vote would have been a material one, as it was in the *Belleair* case and in the *Pompano* case, but, in our case, there was no attempt, and, in the language of the Supreme Court of Florida in the *Pompano* case, text page 626:

> "The purpose of the statute, sections 5106 (3296) et seq., C. G. L., providing for judicial validations of bona fide issues of duly authorized governmental bonds and certificates of indebtedness, is to facilitate bona fide sales of valid duly authorized bonds and certificates by means of authorized judicial decrees conclusively adjudicating the validity of such duly authorized bonds and certificates as issued, unless it appears by statute or by the bonds or certificates, or by the duly required record of the validating proceedings or by the record duly required to be made and kept of the advertisement, election or other proceedings required for issuing such duly authorized bonds or certificates, that some express or implied command, prohibition of limitation of the State or Federal constitution was violated in validating or in issuing such duly authorized governmental bonds or certificates of indebtedness. State ex rel. Nuveen *v.* Greer, 88 Fla. 249, 102 So. 739, 37 A. L. R. 1298; Weinberger *v.* Board of Public Instruction, 93 Fla. 470, 112 So. 253; Brown *v.* City of Lakeland, 61 Fla. 508, 54 So. 716."

In the above quoted language the words "expressed or IMPLIED command, prohibition or limitation of the State or Federal Constitution," are material in our case in two respects, first, the Charter Act itself violated Section 12 of the Declaration of Rights, Constitution of Florida, and these bonds as general obligations would also violate the same provision of the Constitution in that it would deprive the people of their property without just compensation. In the *Nuveen* v. *Greer* case, 88 Fla. 249, 102 So. 739, cited by the Supreme Court of Florida in the above language, the court held certain bonds to be void, notwithstanding the fact that they had been recognized as valid by the issuing City, interest had been paid for a long period of time, and part of the principal had been paid. The issuance of the bonds in the *Nuveen* v. *Greer* case was authorized by the City Charter, was not expressly prohibited by the Constitution of Florida, but violated an implied provision of the Constitution, the same as the Charter Act in the instant case impliedly violated Section 12 of the Declaration of Rights, Constitution of Florida, and the Fourteenth Amendment to the Federal Constitution, and, in holding the bonds void, the court says:

> "Municipal bonds issued without competent legal authority or for a purpose that is forbidden by controlling law are invalid even in the hands of bona fide holders for value. And recitals of compliance with law contained in municipal bonds cannot confer authority not legally given to issue the bonds."

Perhaps it is needless to add that the overwhelming weight of authority, and numerous decisions of the Florida Supreme Court, establish the principle that where a bond is issued without authority of law, it cannot be afterwards validated by a legislative act, consequently, the validating acres in this case would have no effect; in the second place,

such an act would be retroactive legislation and would violate Constitutional limitations protecting private property.

In concluding our argument on this point, petitioner respectfully submits that the court erred in entering the judgment in that it did not take into consideration the decisions of the Supreme Court of Florida in construing the act under which the bonds were issued and other pertinent decisions, and especially the effect of the judgment as an invasion of property rights. Certainly the purchasers of these bonds were bound to look into the authority of the issuing municipality, were bound to look into the records of the proceedings for issuance of said bonds and the decision of the Supreme Court of Florida construing the Constitution of Florida. The plaintiff had an opportunity to investigate these points while this petitioner did not, because petitioner had no part in the issuance of said bonds. The citizens of this petitioner, and, as a matter of fact, the citizens of the issuing municipality, had no notice that the bonds were to be issued or that they would be general obligations to encumber their property. The only notice given was with reference to the improvements, and this notice specifically stated that the costs of said improvements would be assessed against and paid by the abutting property (R. 37). It has been shown that, if this judgment be sustained, it becomes a general obligation of this petitioner, payable as other general obligations are payable, and it has been shown, under the decisions of the Supreme Court of Florida, that the defenses we now interpose must be heard in this proceeding; otherwise, petitioner will be barred from ever raising the question again.

Third Assignment of Error.

The District Court and the Circuit Court of Appeals erred in holding that the Town of Largo was or could be the legal successor to the City of Largo.

The court below failed to make any distinction between the Town of Largo and the City of Largo. The Town of Largo exists by virtue of Section 6715, Laws of Florida, 1913 (see App. 1). Section 10761, Laws of 1925 (see App. 3), attempted to abolish the Town of Largo and to create the City of Largo. The latter act was held *void* by the Supreme Court of Florida as violative of Section 12, Declaration of Rights of the State of Florida (see *State ex rel. Davis* v. *City of Largo, supra*).

The Town of Largo could issue its bonded obligations only by an affirmative vote of the majority of its freeholders (see App. 2).

An inspection of the record reveals (R. 5, 6 and 7):

1. The bonds and coupons were issued under the seal of the "City of Largo".

2. The bonds and coupons were issued by officers purporting to act for and in behalf of the "City of Largo".

3. The bonds and coupons were issued according to the recitals contained therein pursuant to a void and unconstitutional act (Section 10961 of the Laws of Florida 1925). The act attempting to create the City of Largo being void, nothing done pursuant thereto has any legal effect (see *Norton* v. *County of Shelby*, 118 U. S. 425, 30 L. Ed. 178); therefore no lawful obligations were created by the City of Largo which the Town of Largo could assume or succeed to either by implication of law, act of the Legislature of the State of Florida, or the manner in which it conducted its municipal affairs (see also *Hillsborough County* v. *Temple Terrace Assets Co.*, 149 So. 473, 111 Fla. 368; *South Ottawa* v. *Perkins*, 84 U. S. 260, 24 L. Ed. 154; *State ex rel. Bours* v. *L'Engle*, 40 Fla. 392, 24 So. 539; *Holland* v. *State*, 15 Fla. 455); and the courts may enjoin their issue (*Brown* v. *City of Lakeland*, 61 Fla. 508, 54 So. 716) or their payment (*Munroe* v. *Reeves*, 71 Fla. 612, 71 So. 922).

Therefore, the City of Largo never existed *de jure* nor *de facto*. The Town of Largo having existed prior to the creation of the City continued to exist only by reason of the Act of the Florida Legislature creating it, and consequently had only such powers as were delegated to it by reason of the provisions contained in said act.

The Supreme Court of Florida has defined the elements necessary to establish or create a *de facto* corporation (see *Municipal Bond & Mortgage Corp.* v. *Bishops Harbor Drainage Dist.*, 182 So. 794, 133 Fla. 430), so it is demonstrated that a *de facto* corporation did not exist here as contemplated by the Supreme Court of Florida.

Conclusion.

For the reasons heretofore advanced it is respectfully urged that the Circuit Court of Appeals erred in affirming the judgment of the District Court and your petitioner, therefore, prays that this Court exercise its supervisory powers by granting the writ of certiorari, and thereafter reviewing and reversing said decision.

M. A. McMULLEN,
Clearwater, Florida,
As Counsel for Petitioner.

GEO. L. BROWN,
CYRIL E. POGUE,
Clearwater, Florida,
Of Counsel for Petitioner.

APPENDIX 1.

Chapter 6715—(No. 295).

AN ACT to Repeal Chapter 5511 of the Laws of Florida, 1905, Chapter 6066 of the Laws of Florida, 1909, Chapter 6364 of the Laws of Florida, 1911, and to Abolish the Government of the Town of Largo under the Above Laws and to Establish a Commission Form of Government for the Town of Largo, Florida, to Prescribe Its Jurisdiction and Powers, and Territorial Limits.

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. That Chapter 5511 of the Laws of Florida, 1905, Chapter 6066 of the Laws of Florida, 1909, Chapter 6364 of the Laws of Florida, 1911 be and the same are hereby repealed.

SEC. 2. That the inhabitants of the Town of Largo, Pinellas County, State of Florida residing within the territory hereinafter described shall continue to be and are hereby constituted a body politic and corporate by the name and style of the Town of Largo, County of Pinellas, State of Florida, and by and under such name.

(a) Shall have perpetual succession and shall own, possess and hold all property real and personal heretofore owned, possessed or held by the said Town of Largo, Pinellas County, State of Florida and shall assume, manage and dispose of all trust in any way connected therewith.

(b) May sue and be sued, plead and be impleaded in all courts and places, and all manners and proceedings, may have a common seal and change the same at its pleasure, may purchase, receive, hold and enjoy, or sell and dispose of real and personal property;

(c) May receive bequests, give donations of all kinds of property in fee simple or in trust for public, charitable or other purposes, and do all things and acts necessary to carry out the purpose of such gifts, bequests and donations, with powers to manage, sell, lease, or otherwise dispose of the same in accordance with the gifts and bequests.

(d) Shall have the power, within and without its territorial limits to construct, condemn, purchase, acquire, lease or to maintain, conduct and operate within, and without its corporate limits, wharves, warehouses, ship channels, break waters, jetties, water-works, parks, drives, light plants, telephone systems, power plants, transportation systems, grave yards, pest houses, hospitals and libraries for the use of said town and its inhabitants, and to make a contract of whatever nature in connection therewith and shall enforce such purchase if necessary by emminent domain proceedings, and shall have the right and power to issue bonds upon the majority vote by real property tax payers at any general or special election, provided, however, that the maximum amount to which the said town of Largo may bond shall not exceed 25% of its assessed valuation.

(e) May contract and be contracted with in regard to all matters and things.

SEC. 3. A corporate authority of the said town shall be vested in a board of five commissioners, one of whom shall be Mayor and one of whom shall be Town Treasurer, selected by the Board of Commissioners at their first regular meeting upon assuming the duties of the office of Commissioners.

SEC. 4. At an election to be held on the first Tuesday in July, 1913, there shall be elected a Board of five Commissioners of said Town. The Commissioners of said Town shall hold office for the term of two years: Provided, That the first five Commissioners so elected in July, 1913, shall draw lots, and two of them shall serve until the first Tuesday in June, 1914, and the remaining three shall serve until the first Tuesday in June, 1915, and their successors respectively shall be elected for the term of two years. The annual elections of such officers (except for the year 1913) shall occur on the first Tuesday in June, and they shall hold office until their successors are elected and qualified. The Board of Commissioners shall have authority to fill vacancies that may occur in the Board, by death, resignation, or inability to act. The Mayor shall have jurisdiction for the trial of all offenders against the town ordinances. He shall see that the ordinances of the town are faithfully executed,

he shall have the power by his warrant to have brought before him any person or persons charged with a violation of the town ordinances, and to require the attendance of witnesses from the town, the accused and a policeman; to administer oaths; to take affidavits, and inquire into the truth or falsity of all charges preferred; to decide upon the guilt or the innocence of the accused and to affix and enforce a penalty, the sentence prescribed by law, and the ordinances of the town; to pardon and release persons convicted by him, in term, time or otherwise; to issue his mandate in writing to the marshal; to have and exercise all powers incident and usual to the due enforcement of his jurisdiction. Appeals from the judgment and sentence of the Mayor shall be taken in time and manner prescribed by law, but all appeal bonds shall be submitted to the Mayor, and if approved by him said appeals shall operate as a supersedeas. He shall keep a record of his official acts, substantially setting forth the charges preferred against the parties brought before him by warrant or otherwise, and judgment rendered in each and every case and he shall require the town manager to make and preserve such record by regular minutes.

Sec. 5. The Mayor shall have general supervision over all town officers except the Board of Commissioners, and may examine into the condition of their offices and the books, records and papers therein, and the manner of conducting their official busines, he shall report to the Board of Commissioners all violation or neglect of duty or any misfeasance, malfeasance or nonfeasance in office, neglect of duty, or improper conduct on the part of any town official that may come to his knowledge.

Sec. 6. The Mayor shall communicate from time to time to the Board of Commissioners such information and such recommendations of measures touching the public service as he may deem proper. He shall take care that all ordinances and laws of the town and the orders of the Board of Commissioners are enforced and he shall perform such other duties as the ordinances may require.

Sec. 7. The Mayor may be impeached by the Board of Commissioners for misfeasance, malfeasance, or non-

feasance in office, or for drunkenness or habitual intoxication, and he may be removed from office upon conviction by an affirmative vote of a majority of the members of the Board of Commissioners. Should charges be preferred against the Mayor at any time they shall be in writing and shall clearly set forth the offence or offences of which he is accused and a copy thereof signed by the President of the Board of Commissioners pro tempore and attested by the town clerk with the seal of the town attached, shall be served on him by the marshal, and the Commissioners shall proceed without unnecessary delay to investigate the charges and decide them. The Mayor shall have the right to be heard in person or by attorney at such investigation and trial.

SEC. 8. The Mayor shall be ex-officio president of the Board of Commissioners, and in the event of his absence from the town or his inability from sickness or any other cause to discharge the duties of his office the Board of Commissioners shall elect a temporary President who shall discharge the duties of the Mayor.

SEC. 9. The legislative power of the corporation shall be exercised by a Board of Commissioners composed of five members who shall serve for a period of two years and until their successors are elected and qualified except as otherwise provided for in this Act, the first election of the Board of Commissioners provided for in this Act shall be held on the first Tuesday in July, 1913, and on the first Tuesday in June of every year thereafter. All vacancies in the Board of Commissioners between elections shall be filled by the votes of the remaining members of the Board of Commissioners. The members of the Board of Commissioners shall elect one of their members to be Mayor, and one to be town treasurer. The Mayor shall receive such compensation for his services as may be prescribed by ordinance. The treasurer shall give such bond as may be determined by the Board of Commissioners, and shall receive such compensation as may be prescribed by ordinance.

SEC. 10. The Board of Commissioners may determine its own rule of procedure and punish the members for non-

attendance or disorderly conduct according to its own prescription. Three-fifths of the members conferring it may expel a member for non-attendance or other improper conduct while in office, the majority of the members of the Board of Commissioners will be required to form a quorum for the transaction of business, but a smaller number may adjourn from day to day and under the ordinance may compel the attendance of absent members by fines and penalties. The temporary President of the Board of Commissioners, and the Town Clerk shall have the power to administer necessary oaths, and may issue subpoenas and compulsory proceedings to compel the attendance of persons, and the production of books and papers before the Board of Commissioners, or any Committee of the same. The Board of Commissioners shall hold meetings at such times as it may determine, not less than one regular meeting each month.

SEC. 11. The Board of Commissioners shall have power by ordinance to levy and collect all taxes, to appropriate money and provide the payment of all debts and expenses of the town; to make regulations to prevent the introduction of contagious diseases in the town; to establish hospitals; jails, houses of correction and detention, and to make regulations for the government thereof; to make regulations to secure the general health of the inhabitants and to prevent and remove nuisances; to provide for the cleaning and keeping in good sanitary condition of all premises within the limits of the town; to regulate the construction and arrangement of earth closets and privys and to make all reasonable rules and regulations in regard thereto; to provide the town with water by waterworks; to establish fire departments; to provide for lighting the town, and to own lighting plants; to make appropriations to open, alter, abolish, widen, extend, establish, improve, clean and keep in repair streets, alleys, sidewalks and sea-walls, to erect, establish and keep in repair privys, culverts, sewers and gutters; to grant rights and franchises to and upon the streets, alleys, public roads, ways and avenues of said town for public utility; to make appropriations for lighting streets and public buildings, and for the erection of all

buildings necessary for the use of the said town; to license, tax and regulate all privileges taxable by the State; to prohibit and suppress all gambling houses, bawdy and disorderly houses, and obscene pictures and literature to regulate and restrain or prevent the carrying on or manufactories dangerous in causing or producing fires, and to regulate and license the sale of fire arms, to suppress the carrying of concealed weapons to regulate the storage of combustible, explosive and inflammable materials; to provide for and regulate the inspection of pork, beef, flour, meal, and all other provisions, oils, whiskey and other spirits; regulate the inspection of milk, butter, lard and other provisions; to regulate the vending of meat, poultry, fruit and vegetables; to establish and regulate markets; to impose penalties upon owners, occupants, agents of any house, walk or sidewalk, or other structure which may be considered dangerous or detrimental to the citizens unless after due notice to be fixed by ordinance the same be removed or repaired, and to condemn property for municipal purposes; sell gas, water and electric power, and any other products of any public utility operated by the town; to receive bequests and devices, to execute all trusts left to the town; to control wharves and fix rates of wharfage within or without the corporate limits of the town; to establish pounds within the corporate limits of the town; to provide for enclosing, improving and regulating public grounds belonging to the town in or out of the corporate limits; to pass all ordinances necessary to health, morals, convenience and safety of the citizens; to secure peace and good order in the town and to carry out the full intent and meaning of this Act, and to accomplish the object of this incorporation; to provide for the appointment of a police force, to provide for the arrest of any persons violating any ordinance and for the punishment upon conviction by fines, forfeitures, penalties and imprisonment, with or without labor, but no penalty shall exceed $500.00 and no term of punishment shall be for longer term than three months for the same offence.

Sec. 12. The Board of Commissioners shall have power to appoint an officer to be known as town manager whose

duty shall be to act as town clerk, town tax collector, town tax assessor and town marshal, and such other duties as may be prescribed by the Board of Commissioners. He shall be required to furnish bond in such amount as may be determined by the Board of Commissioners. He shall account to the Board of Commissioners for all moneys, papers and properties handled by him. He shall hold office at the pleasure of the Board of Commissioners. He shall be required to turn over all moneys to the town treasurer at least twice each month and take proper receipts therefor.

SEC. 13. It shall be the duty of the town manager to attend all meetings, both regular and special, of the Board of Commissioners to aid in enforcing of order under the direction of said officers; to execute the demands of the Board of Commissioners from time to time, as well as the Mayor, in the line of his duty, and to execute all processes issued by the authority thereof; to attend the Mayor's court during its sittings, and to execute his demands, to aid in enforcing order therein under the direction of the Mayor, and to perform such other duties as may be appropriate to his office under the provisions of the law, or as may be required by ordinance. He shall have powers of arrest and be controlled by the Board of Commissioners.

SEC. 14. The Board of Commissioners shall have the power to require the town manager to perform the duties of sanitary inspector, and perform such other duties in reference to the inspection of property and premises, and reporting the same as the Board of Commissioners may require.

SEC. 15. The town shall have the power to raise by tax and assessments upon all real estate and personal property, all sums of money that may be required for the improvement and good government of the town, and for carrying out of the powers and duties herein granted and imposed.

SEC. 16. The town may make its own assessment of the property for assessment, but the tax levied for one year must not exceed the sum of twenty mills on the dollar, except for the purpose of paying the interest and sinking fund on bonds issued and authorized by the said corpora-

tion as provided by law, but this provision must not be construed so as to prevent the town from making such special assessments of property for improvements as are specified in this Act. All assessments of property for taxation shall be as nearly as practicable in the manner now provided by law of the State for the assessment of taxes. It shall not be necessary to describe personal property assessed for taxation, and the term "personal property" shall be a sufficient description to sustain any listing and assessment of the personal property of any person, firm or corporation.

SEC. 17. It shall be the duty of the town tax assessor to make out and submit to the first meeting, or as soon thereafter as practicable, of the Board of Commissioners in August of each year, a preliminary assessment roll of the town. As soon as practicable after the assessment roll shall be completed, and submitted to the Board of Commissioners, it shall cause to be published or posted at the town hall, and two other public places in the town, a notice that the said assessment roll has been submitted to the Board of Commissioners, and approved, and requiring all persons desiring to have correction thereof made, whether in the listing, valuation of property or otherwise, to file with the town tax assessor on, or before the day to be named in the said notice, which day shall not be less than ten days after the first publication or posting of said notice, their petitions to the Board of Commissioners setting forth their objections to the said assessment, and the correction that they desire made. Said notice shall be published for two consecutive weeks in some newspaper published in Pinellas County, or posted as aforesaid, and said notice shall name a time and place when and where the Board of Commissioners shall meet for the purpose of equalizing the assessments and making proper corrections. From the date of the first publication of said notice, to and including the time of such meeting of the Board of Commissioners, the assessment roll shall be open to the inspection of the public during reasonable office hours.

All petitions for correction of assessments so filed with the town tax assessor shall be by him delivered to the Board of Commissioners, and the Board by Committee or other-

wise shall investigate concerning the same; and upon the day named therefor in the notice, shall meet and sit as an equalizing board for the purpose of equalizing the said assessments and correcting the same, and shall consider and act upon all petitions, and shall make such changes in the valuation or listing of the property as may be necessary to the proper, just and legal equalizing of said assessment. It shall be the duty of the town tax assessor to make out a complete tax roll, as corrected by the Board of Commissioners, and after the same has been adopted and approved by the Board of Commissioners, it shall stand as the assessment of taxable property in the town. As soon as practicable after such approval and adoption of the assessment roll, the Board of Commissioners shall determine and fix the rate of taxation, and make the annual tax levies of the current year. The Board of Commissioners may levy a tax to be raised as a whole, or make special levies for particular purposes as to them shall seem best.

Sec. 18. All taxes shall be due and payable on the first day of November of each year or as soon thereafter as the assessment roll shall have been completed, due notice of which shall be given for two consecutive weeks in some newspaper published in Pinellas County, or by posting such notice at the town hall or two other public places in said town, and the taxes remaining due on the first day of January thereafter shall be enforced in the manner prescribed by law, and interest at the rate of twelve per cent per annum from the first day of January shall be added thereto and collected; provided no interest shall run until ten days have elapsed from the date of the first publication or posting of said notice by town clerk. Any assessment of taxes shall be, and remain a lien upon the property assessed superior to all other liens or claims until the same shall be paid.

Sec. 19. The Board of Commissioners shall have full and complete jurisdiction, charge and control over all public or dedicated parks, roads, wharfs, beaches, water fronts, ways, avenues, streets, and alleys, within the limits of the said town, and shall have power to cause obstructions to be removed therefrom and to restrain and regulate the use and

occupation of same by any person or corporation whatsoever to the end that the safety, comfort, and welfare of the public may be secured and preserved.

Sec. 20. The Board of Commissioners are hereby authorized, by ordinance, to regulate, provide for, require the opening, widening, extending and improving of streets, avenues and public places; the construction and maintenance of sidewalks and street pavements; the establishment and maintenance and keeping in order of grass plots and parkways in front of property between the property lines, and the driveways and the center of the streets; the drainage and filling in of low places, public or private, dangerous to public health, and the cleaning up and putting in proper condition of places requiring such work to be done to promote the public welfare; and the construction and maintenance of water mains, sewers and drains, and may by ordinance provide for the payment of costs thereof by general taxation or by special assessment of the costs thereof against the property so benefited, and in case of draining or filling in of low places (other than streets, avenues, public places or alleys) dangerous to public health, the cleaning up and putting in proper condition of places requiring such work to be done to protect the public welfare, shall provide for the payment of the costs of such work by special assessment of the cost thereof or of such part of the costs as may be provided by ordinance against the property upon which such work is done, and the town shall have a lien superior to all other liens upon all abutting property, or upon the property drained and filled in or cleaned up and put in proper condition as the case may be, for the amounts of the special assessments, together with the interest thereon, and all the costs of collection thereof. Whenever the doing of such thing is provided for by ordinance, the ordinance providing for the same shall state the estimated cost thereof, and the estimated amount per front foot as special assessment to be levied upon abutting property, or the estimated costs to be specially assessed against the property drained, filled in, cleaned up, or put in proper condition as the case may be, and shall be published once a week for four weeks in some newspaper

published in Pinellas County, Florida, or posted at the town hall and two other public places in said town for thirty days, and the Board of Commissioners shall meet as soon as practicable after the expiration of said publication or posting at a time named in the ordinance, and permit any owners of, or any persons interested in, any property against which it is proposed to levy such special assessment to present the Board of Commissioners any objection which he may have to the enforcement of the requirement of such ordinance and shall have power, if they deem just and right, to require the same, to repeal or amend said ordinance; but no such amendment shall increase the amount to be specially assessed against the property, or shall the assessment against any property be in excess of a special benefit accruing to said property by reason of such work. Any persons owning or interested in any property to be especially assessed or generally assessed for such work, who shall not at such meetings present in writing to the Board of Commissioners his objections to said ordinance, shall be deemed to have consented to its provisions, and any person so presenting his objections to said ordinance, and not satisfied with the act thereon, shall have the right within sixty days to present to any court of competent jurisdiction against the enforcement of such ordinance, and the court shall have the power upon proper cause shown, to grant such injunction, and any person not presenting his bill for injunction within sixty days, or failing to push to a successful conclusion with due diligence his application for injunction shall be deemed to have consented to the enforcement of the ordinance, and the levy and collection of the special assessment and taxes, necessary thereto, he shall not thereafter be heard to defend against or question the validity of such tax or special assessment. The Mayor and the Board of Commissioners are hereby authorized to provide by ordinance for the issuance of special assessments, town certificates for such amounts and drawing such rates of interest, and upon such terms and conditions as may be deemed necessary to enable the town to pay the costs of such work, pending the collection of special assessment and taxes and to provide for the payment thereof with interest, and the Board of Commis-

sioners shall as soon as practicable after the completion of such work by resolution, fix a special assessment upon property benefitted by the special assessment against the property drained, filled in, cleaned up or put in proper condition as the case may be, at an amount not exceeding either the actual cost of the work or the estimated special assessment for the work. Any person desiring in any way to contest the validity of any such special assessment or lien shall, within sixty days after the publication and posting at the town hall and two other public places in said town of the resolution, fixing the special assessment, institute suit to have an enforcement thereof enjoined, or its validity legally declared, and no person instituting such suit shall hereafter be heard to question the validity thereof or to defend against enforcement of the said lien upon the grounds of invalidity. Any such special assessment paid within sixty days after the publication or posting of such resolution shall be accepted without interest, and if not paid within the said time shall bear interest from the date of publication or posting at the rate of eight per cent per annum. The Mayor and Board of Commissioners may by ordinance provide for the payment of such special assessment in installments, and for the collection by the enforcement of liens by attorney or attorneys after any payments have been made in compliance with the provision of such ordinance. The liens for the amount of such special assessment shall be enforced in the same manner as is provided herein for the collection of taxes.

Sec. 21. All persons who shall possess the qualifications requisite to an elector at a general State election and shall have paid poll taxes as provided by law and as prescribed at State elections and shall have resided in the town for three months next preceding the election and shall have been registered in the municipal registrations as shall be prescribed by ordinance shall be a qualified elector of the town in all general and special elections except bond elections, and provided that the State and County registration shall not be required to qualify an elector of the town. All electors voting in bonding elections shall possess the above requirements and in addition thereto shall be tax payers

on real or personal property in the corporate limits of the town as shall be evidenced by the last approved tax roll.

The Board of Commissioners shall provide for holding all elections and for canvassing the votes and certifying the result thereof. The election shall be held as near as may be in accordance with the law governing elections for County officers and the same form of ballot shall be used as is now provided by law for the use in elections for County officers, any person desiring his name to be printed upon the official ballot as a candidate for any office shall not less than fifteen days before the election file with the town clerk a petition signed by five or more qualified electors of the said town, asking that his name be placed on the official ballot as a candidate for such office. The Board of Commissioners shall have the ballot prepared and printed, and shall place upon the official ballot the names of those for whom petitions have been filed within the time provided and no others, but shall leave upon such ballots sufficient space for other names to be written in by the voters.

Sec. 22. All officers of the said town before entering upon the duties of their office shall take and subscribe to an oath to faithfully perform the duties of their office.

Sec. 23. Any officer of the said town may be impeached by the Board of Commissioners and removed from office for misfeasance, malfeasance, or non-feasance in office, or for drunkenness or habitual intoxication upon an affirmative vote of three-fifths of the Board of Commissioners. Should charges be preferred against any officer, the same procedure shall be had and observed as provided in this Act in the case of charges against the Mayor.

Sec. 24. The officers of the town of Largo shall have and exercise all powers conferred by general law upon municipal officers not inconsistent with the terms of this Act.

Sec. 25. The Board of Commissioners shall have exclusive power to make all public improvements and expenditures authorized by ordinance, but shall let all contracts for over two hundred dollars to the lowest responsible bidder.

Sec. 26. No suit shall be maintained against the town for damages arising out of its failure to keep in proper condition any sidewalk, pavement, viaduct, bridge, wharf, street, or other public place, unless it should be made to appear that the damage alleged was attributable to the gross negligence of the town, and that written notice of such damage was, within thirty days of the receiving of the injury, given to the Mayor with such reasonable specifications as to time and place, and witnesses, as will enable the town officials to investigate the matter, and no verdict shall in any suit be given for an amount exceeding compensation, damages to the plaintiff directly attributable to such negligence on the part of the town and not caused by contributory negligence on the part of the plaintiff. It shall be the duty of the Mayor on receiving such notice to at once investigate the matter and lay the facts supported by the evidence before the Board of Commissioners in a written report. The Board of Commissioners shall have the right and upon a written report of the person injured it shall be the duty of the Board of Commissioners to investigate the matter and it may by ordinance, make such reasonable settlement of any such damages that may be agreed upon before the Board of Commissioners and the person so damaged, which settlement must be approved by a three-fifths vote of all the members of the Board of Commissioners.

Sec. 27. The numbers, powers, duties, terms of office and time and manner of election and appointment of any and all Boards and officers of the town of Largo created by the State Legislature or any town ordinance, excepting only the legislative powers given the Board of Commissioners may be omitted and changed for any and all boards and officers whether created by State legislation or town ordinance may be abolished, and new boards and officers created by ordinance adopted by the affirmative vote of three-fifths of all the members of the Board of Commissioners, and at a general or special municipal election approved by the affirmative vote of the majority of all the qualified electors who shall have voted on the proposition; Provided that not less than twenty per cent of the qualified voters shall have voted on such proposition, and provided, that

once for three weeks preceding such election such ordinance or ordinances shall have been published in Pinellas County, Florida, and posted in the town hall or two other public places in said town; and provided further that the town electors should be given an opportunity at such election to vote separately for each amendment upon the proposed changes to each office to be effectual, and, provided further, that this Act shall not deprive the Board of Commissioners from creating or abolishing any office not created or recognized by the State Legislature, or ordinance approved by the votes of the electors of the town.

SEC. 28. The present municipal government of the town of Largo shall provide for an election to be held first Tuesday in July 1913 for the purpose of electing five Commissioners provided for in this Act.

SEC. 29. The holder of any elective office may be removed by the qualified electors.

Method of Procedure.

(1) The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by the electors qualified to vote at a municipal election in said town if held at the date of the filing of said petition equal in number to at least fifty per centum of the entire vote cast at the last preceding municipal election demanding an election to determine whether or not said officers shall be removed from office, shall be addressed to and filed with the town clerk, and said petition shall contain a general statement of the ground for which the removal is sought in not more than two hundred words (200), which statement shall not be open to review.

Signatures to Petition.

(2) The signatures to the petition need not all be appended to one paper, but said petition may be presented in sections. The number of signatures to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified voter or tax payer of the city shall be competent to solicit said signatures. Each section shall

have attached thereto the affidavit of the person soliciting signatures to the same, stating that all the signatures to the attached section were made in his presence, and that each signature to the section is the genuine signature of the person whose name purports to be thereunto subscribed, and that no other affidavit thereto shall be required. Each signature, the genuineness of which is not called in question by the sworn affidavit of the purported owner thereof, shall be presumed to be genuine. Until it be proved otherwise by official investigation it shall be presumed that the petition presented contains the signatures of the requisite number of qualified voters, and conforms to all other legal requirements. Each signer of said petition shall add to his signature his place of residence, or a description which will enable his place of residence to be determined, and his occupation.

(3) Said petition shall be presented to the town clerk for filing and within ten days from the date of the presentation of such petition, the clerk shall examine and ascertain from the records of registration whether or not said petition is signed by the requisite number of electors qualified to sign said petition, and if necessary the clerk may employ extra help for that purpose, and the clerk shall attach to said petition his certificate showing the result of said examination. If by the said certificate, the petition is shown to be insufficient, as to the number and genuineness of signatures, it may be amended by additional signatures within five days from date of said certificate. The clerk shall, within five days after such amendment make like examination of the amended petition, and if his certificate shall show the same to be insufficient in the same particulars, it shall be returned to the person presenting the same without prejudice, to the presentation of a new petition to the same effect.

Recall Election.

(4) If the petition shall be found to be sufficient as to the number and genuineness of the signatures, the clerk shall forthwith file the same in his office, and a special election shall be held within twenty days from said filing to determine whether said electors will recall such officer. All

arrangements for said election shall be made, and the same shall be conducted, returned, and the results thereof declared, in all respects as are all other municipal elections provided for in this charter, except as in this section otherwise provided, and except also that the clerk shall give and sign the notice of proclamation of election, appoint the election officers, and designate the polling place in each election precinct.

Office Justification.

(5) In the published call for the election there shall be printed in not more than two hundred words the reason for demanding the recall of the officer as set forth in the recall petition, and in not more than two hundred words the officer may justify his course in office.

Voting. Canvass of Returns.

(6) At such recall election, the ballots shall read:

Shall —— —— (naming the officer) be recalled? Yes.
Shall —— —— (naming the officer) be recalled? No.

If a majority of the electors voting on the recall of the officer sought to be removed, shall vote in favor of such recall, said officer shall thereupon be deemed removed from office and his incumbency thereof shall terminate upon the declaration of this result of said election by the canvassing board thereof. In the published call for such election, the clerk shall name three disinterested electors who shall act as a canvassing board thereof. It shall be the duty of said canvassing board to canvass the returns of said election, and to declare the results thereof in the same manner and with the same force and effect as otherwise herein provided for the canvassing boards of general municipal elections.

Election of a Successor.

(7) Within three days after the canvass of the vote of the said election, the clerk shall issue the call for election for the purpose of electing a successor to the officer so removed. Said election shall be called and held in all respects as herein provided for the election for the recall. The power

and duties of the clerk shall be the same as in the recall election. Said election shall be held upon notice of not less than twenty, and not more than twenty-five days, and the said election shall be held within thirty days from the date of canvass of the vote of the recall election. In the event that by reason of the recall there shall not remain in office a majority of the Board of Commissioners, it shall be the duty of the town clerk to appoint qualified persons to fill such vacancies until the election and qualification as herein provided of the successors of the officers recalled.

SEC. 30. The territorial area of the Town of Largo shall be as follows: Southwest quarter of the northeast quarter, south half of the northwest quarter, the southwest quarter and the west half of the southeast quarter of section 34, township 29 south, range 15 east.

SEC. 31. Upon passage and approval by the Governor this Act shall take effect July 1st, 1913.

SEC. 32. All laws and parts of laws in conflict herewith are hereby repealed.

Approved June 4, 1913.

APPENDIX 2.

Chapter 7191—(No. 385).

AN ACT to Enlarge the Powers of the Town of Largo, Florida.

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. When the Commissioners shall deem it expedient to make any municipal improvement the Commissioners shall so determine by suitable resolution or ordinance prescribing the nature of the proposed improvement, and said resolution or ordinance shall be published in not less than two issues of a newspaper published in the Town, or if no newspaper be published in the Town, then in some newspaper published in Pinellas County, together with a notice requiring all persons interested to show cause at a meeting of the Commissioners to be held at a date therein

to be named, which said date shall be not less than eight days from the first publication of the notice, why the said proposed improvement should not be made, at which meeting the Commissioners shall have power to repeal or amend said resolution or ordinance; but if the same shall not be repealed the Commissioners shall advertise in the manner above specified for bids for the construction of the proposed improvement, which advertisement shall be published for such time as may be prescribed by ordinance or resolution. And immediately upon entering into the contract for the proposed improvement property assessable for such improvement may be assessed as provided by law, and certificates of indebtedness against such property so assessed may be immediately issued and disposed of as provided in Section 2 of this Act, and the improvement bonds may also be immediately issued and sold as herein specified; Provided, that nothing herein shall be construed to prevent or prohibit the said Town from making improvements and then assessing the assessable property in the manner provided by the existing or future organic law of said Town. Provided, further, that nothing herein shall require said Town to advertise for bids unless so required by some other provision of law.

Sec. 2. That the Commissioners may as soon as any assessment for municipal improvements is made issue separate certificates of indebtedness against each tract or lot of assessable property assessed, containing a description of the land and the amount of the assessment, together with the general nature of the improvement for which said assessment is made and the date thereof. Said certificates shall be payable in not less than one nor more than ten years after date, or the three or five or ten equal installments, as the Commissioners may determine, with interest to be fixed by the Commissioners at a rate not greater than eight per cent. per annum, payable annually, from the date of the issuance of the certificates of indebtedness. The amount of said certificates and annual interest shall be guaranteed by the Town, and in case of non-payment of any interest or principal after maturity by the property owner the same shall be redeemed by the Town at the option of

the holder thereof, but said redemption by the Town shall not discharge the lien or assessment against the property. And in case of non-payment of any interest or any installment upon any certificate issued under the provisions of this Act, it shall be optional with the holder thereof to consider the whole of said sum expressed in said certificate as immediately due and payable, with interest to date. The certificate when issued may be sold or disposed of by the Commissioners in payment for said work or improvement, or for cash, in the discretion of the Commissioners, and all certificates of indebtedness constituting a lien shall be payable at the Treasury of the Town; Provided, however, that the Commissioners at their option, instead of disposing of said certificates of indebtedness and guaranteeing the payment thereof as above provided, may retain such certificates and deposit the same with the Town Treasurer in a special and separate fund to be known as the Improvement Fund, and may immediately issue and sell bonds to be designated Improvement Bonds of the Town, with interest coupons attached, not in excess of the aggregate amount of said certificates of indebtedness that shall from time to time be issued, bearing interest at not to exceed six per cent. per annum, payable semi-annually. Such bonds shall be issued in such maturities, form and denominations as the Commissioners shall from time to time determine. Any bonds that shall be issued pursuant to the provisions of this section shall not be computed in determining the limitation of bonded indebtedness prescribed by the Town Charter, and the amount of such bonds so issued shall never exceed the amount of certificates of indebtedness deposited with the Treasurer, and the maturities of the bonds shall coincide substantially with the maturities of the certificates of indebtedness so deposited, and the rate of interest on the certificates shall never be less than the rate of interest on the bonds. The proceeds of said certificates when paid shall be used and applied exclusively to the payment and retirement of the bonds so issued, and all such bonds shall bear a certificate duly signed by the Treasurer certifying that certificates of indebtedness equal in amount to the face value of the bond being issued have been deposited by the

Town with said Treasurer. In cases there shall not be sufficient money in the improvement fund to pay any installment of interest at maturity, the Commissioners shall borrow such an amount of money as shall be necessary for said purpose, issuing a note against said fund, which note shall be retired as soon as funds are available for that purpose, and such note shall bear interest at not more than eight per cent. per annum.

SEC. 3. In all cases where certificates of indebtedness have been issued and sold, and in all cases where contracts have been let by the terms of which the contractor, obligating to construct municipal improvements, has agreed to take certificates of indebtedness in payment for the work, and in all cases where certificates have heretofore been issued but not sold, it shall be optional with the Commissioners to issue improvement bonds under the provisions of this Act and exchange the same for such certificates of indebtedness, or to sell bonds in lieu of unsold certificates of indebtedness, as the Commissioners shall deem expedient; Provided, that after certificates have been sold bonds shall not be exchanged therefor without the consent of the owner of the certificates.

SEC. 4. This Act shall take effect on its passage and approval by the Governor, or on becoming a law without the approval of the Governor.

Approved May 25, 1915.

APPENDIX 3.

Chapter 10761—(No. 739).

AN ACT to Abolish the Municipality Known as the Town of Largo in Pinellas County, Florida; to Create and Establish a Municipality to be Known as The City of Largo in Pinellas County, Florida; to Legalize and Validate the Ordinances of said Town of Largo and Official Acts Thereunder, and to Adopt the Same as the Ordinances of Said City of Largo; to Validate the Contracts of said Town of Largo; to Regulate the Bringing of Suits

Against said City and Providing for Notice Thereof, and to Fix and Prescribe the Territorial Limits, Jurisdiction and Powers of Said City of Largo and the Jurisdiction and Powers of Its Officers, and Repealing Chapter 6715 of the Acts of 1913 and Chapter 7191 of the Acts of 1915.

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. That Chapter 6715 of the Acts of 1913 and Chapter 7191 of the Acts of 1915 are hereby repealed, and the municipal corporation known as the Town of Largo in Pinellas County, Florida, is hereby abolished and a municipality to be known as the City of Largo in Pinellas County, Florida, is hereby created and established to succeed such former municipality of the Town of Largo in Pinellas County, Florida. The City of Largo hereby created and established shall embrace and include all that territory situated and being in Pinellas County, Florida, described as follows, to-wit: Begin at the northeast corner of Section 34, Township 29 South, Range 15 East; thence west on the north line of said Section 34 to the east line of the Seaboard Air Line Right-of-Way; thence northwesterly along said right-of-way to intersection with the east and west center line of Section 27, Township 29 South, Range 15 East; thence west along said center line to the west boundary of said Section 27; thence west on the east and west center line of Section 28 to the northwest corner of the northeast quarter of the southeast quarter of said Section 28; thence south along the forty acre line to the southwest corner of said northeast quarter of the southeast quarter; thence west on the forty acre line to the northwest corner of the southwest quarter of the southeast quarter of said Section 28; thence south along the forty acre line to the southwest corner of said southwest quarter of the southeast quarter; thence west along the north line of Sections 33, 32 and 31, Township 29 South, Range 15 East, across the waters of Clearwater Bay and continuing on said line to the three mile limit on the Gulf of Mexico; thence southerly along said three mile limit to intersection with the south line of Township 29 South, Range 15 East extended; thence east along said Township line to the northwest corner of

the northwest quarter of the northeast quarter of Section 4, Township 30 South, Range 15 East; thence south on the forty acre line to the southwest quarter of said northwest quarter of the northeast quarter; thence east along the forty acre line through Sections 4, 3 and 2 to the southeast corner of the northeast quarter of the northwest quarter of said Section 2, to the northeast corner of said northeast quarter of the northwest quarter; thence west along the Township line to the southeast corner of the southwest quarter of Section 35, Township 29 South, Range 15 East; thence north along the north and south center line of said Section 35 to the northeast corner of the southeast quarter of the northwest quarter of said Section 35; thence west along the forty acre line to the southeast corner of the northwest quarter of the northwest quarter of said Section 35; thence north along the forty acre line to the northeast corner of said northwest quarter of the northwest quarter; thence west along the Section line to the point of beginning.

SEC. 2. That the title, rights and ownership of property, uncollected taxes, dues, claims, judgments, decrees and choses in action, held or owned by the Town of Largo shall pass to, and be vested in the City of Largo hereby created and established, and the ordinances of the said Town of Largo shall be and remain the ordinances of the City hereby organized and established, until altered, amended, modified or repealed by the Commission of said City hereby created and established, and the contracts heretofore entered into by said Town of Largo shall remain in force and be binding upon said City of Largo.

SEC. 3. That the inhabitants of the City of Largo residing within the territory hereinbefore described, shall continue to be and are hereby constituted a body politic and corporate, and by and under such name.

(a) Shall have perpetual succession and shall own, possess and hold all property, real and personal, heretofore owned, possessed or held by said Town of Largo, and shall assume, manage and dispose of all trust in any way connected therewith.

(b) May sue and be sued, plead and be impleaded in all courts and places, and all manners and proceedings, may have a common seal and change the same at its pleasure; may purchase, receive, hold and enjoy, or sell and dispose of, real and personal property.

(c) May receive bequests, give donations of all kinds of property in fee simple or in trust for public, charitable, or other purposes, and do all things and acts necessary to carry out the purpose of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the gifts and bequests.

(d) Shall have the power within and without its territorial limits to construct, condemn, purchase, acquire, lease or to maintain, conduct and operate within and without its corporate limits, wharves, warehouses, ship channels, breakwaters, jetties, sea-walls, water works, parks, athletic fields, golf links, drives, lighting plants, gas plants, telephone systems, power plants, transportation system, graveyards, pest houses, hospitals and libraries, for the use of said City and its inhabitants, and to make a contract of whatever nature in connection therewith, and shall enforce such purchase, if necessary, by eminent domain proceedings, and shall have the right and power to issue bonds for any of the aforesaid purposes and for refunding any indebtedness upon the majority vote of all electors actually voting at any bond election, provided that no elector shall participate in any bond election who is not a free holder in said City, and who is not otherwise qualified as a voter therein.

Provided also, that the maximum amount to which said City of Largo may bond shall not exceed twenty-five per cent (25%) of its assessed valuation.

(e) May contract and be contracted with in regard to all matters and things.

(f) Shall have all power conferred upon municipalities by the General Laws of the State of Florida, when not inconsistent with the provisions of this Act.

SEC. 4. The corporate authority of said City shall be vested in a board of five commissioners, one of whom shall be mayor. Said mayor to be selected by said Board of Commissioners at their first regular meeting after each general election. That said commissioners shall hold office for the term of two years, and the present commissioners of the Town of Largo are hereby made the commissioners of the City of Largo, and the term of each commissioner shall expire at the same time said term would have expired if said Town of Largo had not been abolished. That the general election of said Town shall be held on the first Tuesday in June of each year, and all commissioners shall hold office until their successors are elected and qualified. The Board of Commissioners shall have authority to fill vacancies that may occur in the Board, by death, resignation, or inability to act. The Mayor shall have jurisdiction for the trial of all offenders against the city ordinances. He shall see that the ordinances of the City are faithfully executed, he shall have the power by his warrant to have brought before any person or persons charged with a violation of the city ordinances, and to require the attendance of witnesses from the City, the accused and a policeman; to administer oaths, to take affidavits and inquire into the truth or falsity of all charges preferred; to decide upon the guilt or innocence of the accused and to affix and enforce a penalty, the sentence prescribed by law, and the ordinances of the City; to pardon and release persons convicted by him, in term, time or otherwise; to issue his mandate in writing to the marshal; to have and exercise all powers incident and usual to the due enforcement of his jurisdiction. Appeals from the judgment and sentence of the Mayor shall be taken in time and manner prescribed by law, but all appeal bonds shall be submitted to the Mayor, and if approved by him said appeals shall operate as a supersedeas. He shall keep a record of his official acts, substantially setting forth the charges preferred against the parties brought before him by warrants, or otherwise, and judgment rendered in each and every case, and he shall require the City Manager to make and preserve such record by regular minutes.

SEC. 5. The Mayor shall have general supervision over all city officers, except the Board of Commissioners, and may examine into the condition of their offices and the books, records and papers therein, and the manner of conducting their official business; he shall report to the Board of Commissioners all violation or neglect of duty, or any misfeasance, malfeasance or nonfeasance in office, neglect or duty, or improper conduct on the part of any city official that may come to his knowledge.

SEC. 6. The Mayor shall communicate from time to time to the Board of Commissioners such information and such recommendations of measures touching the public service as he may deem proper. He shall take care that all ordinances and laws of the city, and the orders of the Board of Commissioners are enforced, and he shall perform such other duties as the ordinances may require.

SEC. 7. The Mayor may be impeached by the Board of Commissioners for the misfeasance, malfeasance, or nonfeasance in office, or for drunkenness or habitual intoxication, and he may be removed from office upon conviction by an affirmative vote of a majority of the members of the Board of Commissioners. Should charges be preferred against the Mayor at any time they shall be in writing and shall clearly set forth the offense or offenses of which he is accused and a copy thereof signed by the President of the Board of Commissioners pro tempore and attested by the City Clerk with the seal of the city attached, shall be served on him by the marshal, and the Commissioners shall proceed without unnecessary delay to investigate the charges and decide them. The Mayor shall have the right to be heard in person or by attorney at such investigation and trial.

SEC. 8. The Mayor shall be ex-officio president of the Board of Commissioners, and in the event of his absence from the City or his inability from sickness or any other cause to discharge the duties of his office the Board of Commissioners shall elect a temporary president who shall discharge the duties of the Mayor.

SEC. 9. The legislative power of the corporation shall be exercised by the Board of Commissioners provided for in

Section 4 of this Act, and all vacancies in the Board of Commissioners between elections shall be filled by the votes of the remaining members of the Board of Commissioners. The members of the Board of Commissioners shall elect one of their members to be Mayor. The Mayor shall receive such compensation for his services as may be prescribed by ordinance.

SEC. 10. The Board of Commissioners may determine its own rule of procedure and punish the members for non-attendance or disorderly conduct according to its own prescription. Three-fifths of the members confirming it, may expel a member for non-attendance or other improper conduct while in office, the majority of the members of the Board of Commissioners will be required to form a quorum for the transaction of business, but a smaller number may adjourn from day to day and under the ordinance may compel the attendance of absent members by fines and penalties. The temporary president of the Board of Commissioners, and the City Clerk shall have the power to administer necessary oaths, and may issue subpoenas and compulsory proceedings to compel the attendance of persons, and the production of books and papers before the Board of Commissioners, or any committee of the same. The Board of Commissioners shall hold meetings at such times as it may determine, not less than one regular meeting each month.

SEC. 11. The Board of Commissioners shall have power by ordinance to levy and collect all taxes, to appropriate money and provide the payment of all debts and expenses of the city, to make regulations to prevent the introduction of contagious diseases in the City; to establish hospitals, jails, houses of correction and detention; and to make regulations for the government thereof; to make regulations to secure the general health of the inhabitants and to prevent and remove nuisances; to provide for the cleaning and keeping in good sanitary condition of all premises within the limits of the City; to regulate the construction and arrangement of earth closets and privies and to make all reasonable rules and regulations in regard thereto; to provide the City with water by water works; to establish fire departments;

to provide for lighting the city, and to own lighting plants; to make appropriations to open, alter, abolish, widen, extend, establish, improve, clean and keep in repair streets, alleys, sidewalks and seawalls, to erect, establish and keep in repair privies, culverts, sewers and gutters; to grant rights and franchises to and upon the streets, alleys, public roads, ways and avenues of said City for public utility; to make appropriations for lighting streets and public buildings, and for the erection of all buildings necessary for the use of the said city; to license, tax and regulate all privileges taxable by the State; to prohibit and suppress all gambling houses, bawdy and disorderly houses, and obscene pictures and literature; to regulate and restrain or prevent the carrying on of manufactories dangerous in causing or producing fires, and to regulate and license the sale of firearms, to suppress the carrying of concealed weapons; to regulate the storage of combustible, explosive and inflammable materials; to provide for and regulate the inspection of pork, beef, flour, meals, and all other provisions, oils, whiskey and other spirits; regulate the inspection of milk, butter, lard and other provisions; to regulate the vending of meat, poultry, fruit and vegetables; to establish and regulate markets; to impose penalties upon owners, occupants, agents of any house, walk or sidewalk, or other structure which may be considered dangerous or detrimental to the citizens unless after due notice to be fixed by ordinance the same may be removed or repaired, and to condemn property for municipal purposes; sell gas, water and electric power, and any other products of any public utility operated by the city; to receive bequests and devices, to execute all trusts left to the city; to control wharves and fix rates of wharfage within or without the corporate limits of the city; to establish pounds within the corporate limits of the city; to provide for enclosing, improving and regulating public grounds belonging to the city in or out of the corporate limits; to pass all ordinances necessary to health, morals, convenience and safety of the citizens; to secure peace and good order in the City and to carry out the full intent and meaning of this Act, and to accomplish the object of this incorporation; to provide for the appointment of a

police force; to provide for the arrest of any persons violating any ordinance and for the punishment upon conviction by fines, forfeitures, penalties and imprisonment, with or without labor, but no penalty shall exceed $500.00 and no term of punishment shall be for longer term than three months for the same offense.

SEC. 12. The Board of Commissioners shall have power to appoint an officer to be known as city manager, whose duty shall be to act as city clerk, city tax collector, city tax assessor and city marshal and such other duties as may be prescribed by the Board of Commissioners. He shall be required to furnish bond in such amount as may be determined by the Board of Commissioners. He shall account to the Board of Commissioners for all moneys, papers and properties handled by him. He shall hold office at the pleasure of the Board of Commissioners. He shall be required to promptly turn over all moneys to the city depository.

SEC. 13. It shall be the duty of the city manager to attend all meetings, both regular and special, of the Board of Commissioners to aid in enforcing of order under the direction of said officers; to execute the demands of the Board of Commissioners from time to time as well as the Mayor, in the line of his duty, and to execute all processes issued by the authority thereof; to attend the Mayor's court during its sittings, and to execute his demands, to aid in enforcing order therein under the direction of the Mayor, and to perform such other duties as may be appropriate to his office under the provisions of the law, or as may be required by ordinance. He shall have powers of arrest and be controlled by the Board of Commissioners.

SEC. 14. The Board of Commissioners shall have the power to require the city manager to perform the duties of sanitary inspector, and perform such other duties in reference to the inspection of property and premises, and reporting the same as the Board of Commissioners may require.

SEC. 15. The city shall have the power to raise by tax and assessments upon all real estate and personal property, all

sums of money that may be required for the improvement and good government of the city, and for carrying out of the powers and duties herein granted and imposed.

SEC. 16. The town may make its own assessment of the property for assessment, but the tax levied for one year must not exceed the sums of twenty mills on the dollar, except for the purpose of paying the interest and sinking fund on bonds issued and authorized by the said corporation as provided by law, but this provision must not be construed so as to prevent the city from making such special assessments of property for improvements as are specified in this Act. All assessments of property for taxation shall be as nearly as practicable in the manner now provided by law of the State for the assessment of taxes. It shall not be necessary to describe personal property assessed for taxation and the term "personal property" shall be a sufficient description to sustain any listing and assessment of the personal property of any person, firm or corporation.

SEC. 17. It shall be the duty of the city tax assessor to make out and submit to the first meeting, or as soon thereafter as practicable, of the Board of Commissioners in August of each year, a preliminary assessment roll of the city. As soon as practicable after the assessment roll shall be completed, and submitted to the Board of Commissioners, it shall cause to be published or posted at the city hall, and two other public places in the city, a notice that the said assessment roll has been submitted to the Board of Commissioners, and approved, and requiring all persons desiring to have correction thereof made, whether in the listing, valuation of property or otherwise, to file with the city tax assessor on or before the day to be named in the said notice, which day shall not be less than ten days after the first publication or posting of said notice, their petitions to the Board of Commissioners setting forth their objections to the said assessment, and the correction that they desire made. Said notice shall be published for two consecutive weeks in some newspaper published in Pinellas County, or posted as aforesaid, and said notice shall name a time and place when and where the Board of Commissioners shall meet for the purpose of equalizing the assess-

ments, and making proper corrections. From the date of the first publication of said notice, to and including the time of such meeting of the Board of Commissioners, the assessment roll shall be open to the inspection of the public during reasonable office hours.

All petitions for correction of assessments so filed with the city tax assessor shall be by him delivered to the Board of Commissioners, and the Board by Committee or otherwise, shall investigate concerning the same; and upon the day named therefor in the notice, shall meet and sit as an equalizing board for the purpose of equalizing the said assessments and correcting the same, and shall consider and act upon all petitions, and shall make such changes in the valuation or listing of the property as may be necessary to the proper, just and legal equalizing of said assessment. It shall be the duty of the city tax assessor to make out a complete tax roll, as corrected by the Board of Commissioners, and after the same has been adopted and approved by the Board of Commissioners, it shall stand as the assessment of taxable property in the city. As soon as practicable after such approval and adoption of the assessment roll, the Board of Commissioners shall determine and fix the rate of taxation, and make the annual tax levies of the current year. The Board of Commissioners may levy a tax to be raised as a whole, or make special levies for particular purposes as to them shall seem best.

SEC. 18. All taxes shall be due and payable on the first day of November in each year, or as soon thereafter as the assessment roll shall have been completed. A discount of 2% shall be allowed on all taxes paid during the month of November, and a discount of 1% shall be allowed on all taxes paid during the month of December. No discount will be allowed on taxes paid during the month of January. Collection of taxes due on the first day of February and thereafter in each year, shall be enforced in the manner prescribed by law, and interest at the rate of 12% per annum from the first day of February shall be added thereto and collected. Notice of taxes due, together with discounts and penalties, shall be given for two consecutive weeks in some newspaper published in Pinellas County. Any assessments

of taxes shall be and remain a lien upon the property assessed, superior to all other liens or claims until the same shall be paid.

SEC. 19. The Board of Commissioners is hereby authorized to borrow money upon the promissory note or other evidence of indebtedness of said city for short term periods in anticipation of the collection of taxes or special assessments, or sale of bonds.

SEC. 20. The Board of Commissioners shall have full and complete jurisdiction, charge and control over all public or dedicated parks, roads, wharfs, beaches, water fronts, ways, avenues, streets, and alleys, within the limits of the said city, and shall have power to cause obstructions to be removed therefrom and to restrain and regulate the use and occupation of same by any person or corporation whatsoever to the end that the safety, comfort, and welfare of the public may be secured and preserved.

SEC. 21. The Board of Commissioners are hereby authorized by ordinance or resolution to regulate, provide for and require the opening, widening, extending, grading and improving of streets, avenues, alleys and other public ways and places; the construction and maintenance of sidewalks, curbs and street pavings; the establishment and maintenance and keeping in order of grass plots and parkways in front of property between the property lines and the driveways and centers of the streets; the construction and maintenance of street lighting system, commonly known as whiteways, and the construction and maintenance of sea-walls; the drainage and filling in of low places, public or private, dangerous to public health, and the cleaning up and putting in proper condition of places requiring such work to be done, to promote the public health and welfare; and the construction and maintenance of water mains, sanitary sewers, storm sewers and drains, and may by ordinance or resolution, provide for the payment of the costs thereof by general taxation, or by special assessment of the costs thereof against the property especially benefited thereby, or against the property abutting thereon in proportion to frontage, and in case of drainage and filling in of low places

(other than streets, alleys, avenues and other public ways and places) dangerous to public health and safety, the cleaning up and putting in proper condition of places requiring such work to be done to protect the public welfare, shall provide for the payment of the costs of such work by special assessment of the cost thereof, or of such part of the costs as may be provided by ordinance or resolution, against the property upon which said work is done, and the city shall have a lien superior to all other liens upon all abutting property, or property benefited, or upon the property drained and filled in, or cleaned up and put in proper condition, as the case may be, for the amounts of special assessments, together with the interest thereon and the costs of collection thereof.

Whenever the Board of Commissioners shall decide to make any of the improvements authorized in the preceding portion of this section, it shall adopt a resolution ordering plans, specifications, profiles and estimates of the proposed improvement to be prepared, which said estimates shall include the cost of construction, the cost of engineering and incidental expenses, including the cost of making and levying assessments, and the cost of issuing bonds, if it is proposed to issue bonds to provide funds for said improvement, and said estimates shall show the percentage allowed for actual construction and the percentage allowed for engineering and other incidentals. As soon as said plans, specifications, profiles and estimates have been prepared and filed with the City Manager, the City Manager shall cause a notice to be published in some newspaper published in the City of Largo, which said notice shall state that the said plans and specifications, profiles and estimates, are on file in the office of the City Manager and open to the inspection of the public. Said notice shall also state in a general way the nature of the work proposed to be done, and in case of improvement of streets or other public ways, by paving, curbing, lighting or otherwise, or the construction of sidewalks, or the laying of sanitary sewers along any streets or alleys where it is proposed to assess the cost thereof against the abutting property in proportion to frontage, said notice shall accurately describe the names of said streets or portions of streets, and in case of paving

or sidewalks, the width of said paving or sidewalks. In case of other improvements hereinbefore mentioned, where it is proposed to assess the cost against the property benefited or the property upon which the work is done, as the case may be, said notice shall contain a description of all the property proposed to be assessed, but said property may be described as a whole and need not be described in separate lots, tracts or parcels. Said notice shall also state the date, hour and place at which the Board of Commissioners will meet to hear complaints or protests against the carrying out of said proposed improvement.

In case it is proposed to assess any improvement against the property especially benefited or against the property itself, the notice shall so state, with a general description of all the property against which said assessment is proposed. Any improvement, whether contiguous or not, may for the sake of brevity and convenience, be designated as a district and distinguished with a letter or number or in any appropriate manner. (For example Paving District C, Sanitary Sewer District No. 4).

Said notice shall be signed by the City Manager, and be published at least one time, as above provided, the first publication to be at least ten days prior to the date set for hearing complaints and protests, but the publication of said notice for a greater number of times, or for a longer period, or in more than one newspaper, shall in no way invalidate such publication.

Any person owning or interested in any land liable to be assessed for said improvements, who shall object to the making of said improvements, shall file his objection in writing with the City Manager prior to the date of the meeting set in said notice, and may also appear at said meeting and make such oral protests and objections as he may desire. Any person who has filed a written protest to said work may, within twenty days after the ordering of said work to be done, file a suit in chancery in the Circuit Court to enjoin such improvement, and any person who shall fail to file said written protest or any person who, having filed said written protest, shall fail to file said suit within twenty days, shall be deemed to have consented to said improvement and

shall be forever barred from contesting the legality of the same.

At the meeting set to hear complaints and protests against said improvements, if no objections are filed or if the objections filed seem to the Commission to be insufficient, said Commission may pass a resolution confirming said plans and specifications and ordering said work to be done, or the Commission may in its discretion, order said plans to be changed or revised, or order that new plans, specifications, profiles and estimates be prepared.

At any time after the adoption of the resolution confirming the plans and specifications and ordering the work to be done, the Board of Commissioners may proceed to do said work or let said work by contract.

After said work is completed the actual cost thereof, including the cost of engineering and other incidental expenses, shall be assessed by the Board of Commissioners against the abutting property in proportion to frontage, or against the property especially benefited, or against the property itself, as the case may be, but in no case shall the aggregate assessments exceed the actual cost of said improvement including incidentals, or the total estimated cost as set forth in the preliminary estimate prior to the ordering of said work. Said assessment shall be by resolution which said resolution shall set forth the description of each separate piece or parcel of land assessed and the amount of the assessment against said parcel. The name of the owner of said piece or parcel of land may be set out, but failure to include the name of the owner shall in no way invalidate said assessment. Said resolution shall provide the time when said assessments shall become payable, which may be in equal annual installments not to exceed twenty years and the amount of the interest which shall be payable annually, and shall not exceed eight per centum (8%) per annum.

Interest on said assessments shall begin to run from the time designated by the Board of Commissioners, but when bonds shall have been issued to pay the cost of said improvement as provided by Section 22 of this act, the interest on said assessment shall begin to run from the date of said bonds. If any person shall pay his assessments in full

within thirty days from the date of the resolution confirming said assessment, no interest shall be charged. Said assessments may be paid at any time before date of maturity and if so paid, shall bear interest only to the date of payment.

As soon as practicable after the adoption of said resolution, said assessments shall be published in full, together with a notice of the time and place at which the Board of Commissioners will meet to hear complaints or protests against such assessments. Said assessments and notice shall be published in the same manner as provided for the publication of the notice to hear complaints and protests against the performance of said work and at least ten days prior to the meeting set to hear complaints and if any person owning or interested in any of the land assessed shall be dissatisfied with any assessment he shall file his protest in writing with the City Manager prior to the time set for hearing complaints, and he may appear and be heard before said meeting; and any person who shall have filed said written protest and shall be dissatisfied with the action of the Board of Commissioners thereon, may file a suit in chancery in the circuit court of Pinellas County, within twenty days from the date of the confirming of said assessment, and the circuit court shall hear such writ as speedily as may be, and may affirm or abate said assessment, or order the same reduced, and all persons interested in said land assessed who shall fail to file a written protest with the City Manager as aforesaid, or who shall fail to file said suit as aforesaid within the said twenty days, shall be deemed to have consented to said assessment and shall be forever barred from contesting the legality thereof. If no written protests shall be filed against said assessments, or if the protests filed shall seem to the Board of Commissioners to be insufficient, the Board of Commissioners shall pass a resolution confirming said assessments, but the City Commission may in its discretion reduce any of said assessments, or if there shall appear to have been substantial injustice in said assessments as a whole or in part, the Board of Commissioners may make a new assessment. As soon as confirmed, said assessment shall be entered in a lien book kept by said City for the purpose of recording liens,

and the entry of said liens in said lien book shall be constructive notice of the existence of said lien.

Said lien shall be prior in dignity to all other liens except taxes and shall be collected by the tax collector, and may be enforced by said city by a bill in equity to foreclose said lien in substantially the same manner as mortgages are foreclosed and the City may be a purchaser at said foreclosure sale, or said liens may be enforced by a suit at law against the individual owners of said property, or both procedures at law and in equity may be pursued at one time. Upon the default in payment of any installment of any lien, the city may at once declare the entire amount due and payable and file its suit or suits as above provided, and any judgment obtained shall include all costs or expenses reasonably incurred in prosecuting said suit, including a reasonable attorney's fee, but nothing herein contained shall be construed as preventing said city from enforcing said liens in any other manner now or hereafter provided by law. If any assessment or installment thereof shall remain unpaid for a period of sixty days after the same shall become due and payable it shall be mandatory upon the Board of Commissioners to at once file its suit or suits hereinbefore provided for the foreclosing of said liens or the collecting of said assessment, together with all costs of suit and a reasonable attorney's fee. In case certificates of indebtedness shall be issued against said liens and sold, the owner or owners of said certificates may pursue the same remedy as the City.

If any assessment made under the provisions of this section shall be held by any court of competent jurisdiction to be invalid, or if any said assessment shall be of doubtful validity, the Board of Commissioners may by resolution, declare said assessment invalid and proceed to re-assess said property following the procedure hereinbefore laid down in so far as it shall be applicable.

Sec. 22. On or after adoption of the resolution confirming the plans and specifications and ordering the improvement to be made, the Board of Commissioners may by ordinance or resolution issue bonds of the city for the payment of the cost of said improvement, or any part of such cost, or the reimbursement of any fund of the city from which

any part of the cost has been paid, in an amount not greater than the estimated cost, including the estimated cost of incidental expenses, (incidental expenses as used herein shall include engineering) but no bonds shall be issued in excess of the contract price, and the estimated cost of such incidental expenses. If bonds shall be authorized after such contract is made they may be issued to the full amount of such contract and the estimated cost of such incidental expenses. Bonds may be issued in separate series for the cost of each improvement, or in one series for the cost of any two or more improvements, authorized hereby, and in further series for the cost of any one or more other improvements. Each series of bonds shall mature in annual installments on such date in each year, and in such amounts as the Board of Commissioners may determine, beginning not more than two years from their date, nor extending beyond twenty years from their date. They shall bear interest not greater than six per centum (6%) per annum. Said bonds shall be the absolute, general and direct obligations of the city. They shall be, so far as is practicable, in denominations of $500.00 or $1,000.00. They shall be signed by the Mayor and Clerk, and sealed with the city seal. Coupons shall be attacbed thereto to evidence the installments of interest, which coupons shall be signed by the Mayor, whose signature may be a facsimile. Said bonds shall be sold at the best price obtainable, but for not less than 95 cents on the dollar.

In case the collections from said assessments shall be insufficient in any year to pay the principal or interest maturing on said bonds the Board of Commissioners is hereby authorized to levy a special tax upon all taxable property within the City in sufficient amount to pay said principal and interest at their several dates of maturity.

In case the amount received for the sale of said bonds shall exceed the actual cost of construction and incidentals, said excess amount shall be prorated and credited to the assessments affected.

Any bonds issued pursuant to the provision of this Section shall not be computed in determining the limitations of the bonded indebtedness prescribed by this Act or any gen-

eral law now or hereafter in effect applicable to said city.

The purpose of this and the preceding Section being to provide a satisfactory and economical method by which public improvements within the City of Largo may be made, it is hereby declared that no irregularity or illegality in connection with any of the proceedings herein authorized shall in any way affect the validity of the orders for such improvements or special assessment or bonds or contracts unless such irregularities or illegalities shall substantially affect the rights of the said City or its inhabitants, or the owners of the property assessed for such improvement.

Nothing herein contained shall be construed as preventing said City from issuing certificates of indebtedness and special improvement bonds under Sections 1906 to 1909 inclusive of the general laws of Florida, or any general law of Florida now in force or hereafter adopted, applicable to cities and towns generally in the State of Florida.

SEC. 23. All general or special improvement bonds heretofore issued by the Town of Largo and all resolutions or ordinances of the Town of Largo heretofore adopted approving any plans or specifications for construction work and all contracts entered into by said Town of Largo and every act and thing of every nature whatsoever, done by the Board of Commissioners of said Town of Largo, ordering or making of any public improvement is hereby confirmed, ratified and validated, and the City of Largo is hereby especially authorized and empowered to proceed to assess the cost of any such improvement against the abutting property in proportion to frontage or against the property especially benefited by said improvement or against the property itself as the case may be, and the said City of Largo is hereby expressly authorized and empowered to immediately issue bonds for the payment of any construction heretofore authorized, said bonds to be issued as near as may be in the manner provided in Section 22 of this Act and said bonds, when issued, shall be legal, valid and binding obligations of said City of Largo.

SEC. 24. All officers of the said City before entering upon the duties of their office shall take and subscribe to an oath to faithfully perform the duties of their office.

SEC. 25. Any officer of the said City may be impeached by the Board of Commissioners and removed from office for misfeasance, malfeasance or non-feasance in office or for drunkenness or habitual intoxication upon an affirmative vote of three-fifths of the Board of Commissioners. Should charges be preferred against any officer, the same procedure shall be had and observed as provided in this Act in the case of charges against the Mayor.

SEC. 26. The officers of the City of Largo shall have and exercise all powers conferred by general law upon municipal officers not inconsistent with the terms of this Act.

SEC. 27. No suit shall be maintained against the City for damages arising out of its failure to keep in proper condition any sidewalk, pavement, viaduct, bridge, wharf, street, or other public place, unless it should be made to appear that the damage alleged was attributable to the gross negligence of the City, and that written notice of such damage was, within thirty days of the receiving of the injury, given to the Mayor with such reasonable specifications as to time and place, and witnesses, as will enable City officials to investigate the matter, and no verdict shall in any suit be given for an amount exceeding compensation, damages to the plaintiff directly attributable to such negligence on the part of the city and not caused by contributory negligence on the part of the plaintiff. It shall be the duty of the Mayor on receiving such notice to at once investigate the matter and lay the facts supported by the evidence before the Board of Commissioners in a written report. The Board of Commissioners shall have the right and upon a written report of the person injured it shall be the duty of the Board of Commissioners to investigate the matter and it may by ordinance, make such reasonable settlement of any such damage that may be agreed upon before the Board of Commissioners and the person so damaged, which settlement must be approved by a three-fifths vote of all the members of the Board of Commissioners.

SEC. 28. The Board of Commissioners shall have authority to levy each year, if it shall deem advisable, a tax not to exceed two mills upon the assessed valuation of the prop-

erty in said City for publicity and advertisement of said city, and shall have authority to expend an amount not to exceed the taxes raised by a one-half mill levy in maintaining a public library in said city.

SEC. 29. This Act shall become effective immediately upon its approval by the Governor, or upon becoming a law without said approval.

Approved May 4, 1925.

Chapter 10760—(No. 738).

AN ACT to Amend Section 1 of the Act of the Legislature of 1925 Creating and Establishing a Municipality to be Known as the City of Largo, in Pinellas County, Florida.

Be It Enacted by the Legislature of the State of Florida:

SECTION 1. That Section 1 of the Act of the Legislature of the State of Florida of 1925, creating and establishing a municipality to be known as the City of Largo in Pinellas County, Florida, be and the same is hereby amended to read as follows:

That Chapter 6715 of the Acts of 1913 and Chapter 7191 of the Acts of 1915 are hereby repealed, and the municipal corporation known as the Town of Largo in Pinellas County, Florida, is hereby abolished and a municipality to be known as the City of Largo in Pinellas County, Florida, is hereby created and established to succeed such former municipality of the Town of Largo in Pinellas County, Florida. The City of Largo hereby created and established shall embrace and include all that territory situated and being in Pinellas County, Florida, described as follows, to-wit: Begin at the northeast corner of Section 34, Township 29 south, Range 15 east; thence west on the north line of said Section 34 to the east line of the Seaboard Air Line right of way; thence northwesterly along said right of way to intersection with the east and west center line of Section 27, Township 29 south, Range 15 east; thence west along said center line to the west boundary of said Section 27; thence west on the east and west center line of Section 28 to

the northwest corner of the northeast quarter of the southeast quarter of said Section 28; thence south along the forty-acre line to the southwest corner of said northeast quarter of the southeast quarter; thence west along the forty-acre line six hundred and sixty (660) feet more or less to the north and south center line of said southwest quarter of the southeast quarter of the said Section 28; thence south thirteen hundred and twenty (1320) feet more or less, to the north line of Section 33; thence west along the north line of Sections 33, 32 and 31, Township 29 south, Range 15 east, across the waters of Clearwater Bay and continuing on said line to the three-mile limit in the Gulf of Mexico; thence southerly along said three-mile limit to intersection with the south line of Township 29 south, Range 15 east extended; thence east along said Township line to the northwest corner of the northwest quarter of the northeast quarter of Section 4, Township 30 south, Range 15 east; thence south on the forty-acre line to the southwest corner of said northwest quarter of the northeast quarter; thence east along the forty-acre line through Sections 4, 3 and 2 to the southeast corner of the northeast quarter of the northwest quarter of said Section 2; thence north to the northeast corner of the southeast quarter of the northwest quarter of Section 35; thence west along the forty-acre line to the northwest corner of the southeast quarter of the northwest quarter in Section 35; thence north along the forty-acre line to the northeast corner of the northwest quarter of the northwest quarter of Section 35; thence west along the section line to the northwest corner of Section 35 to point of beginning.

SEC. 2. This Act shall become effective immediately upon its approval by the Governor, or upon its becoming a law without said approval.

Approved May 25, 1925.

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CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

October Term, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND,

Respondent.

BRIEF IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI

GILES J. PATTERSON,
T. M. SHACKLEFORD, Jr.
Counsel for Respondent.

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In the Supreme Court of the United States

October Term, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND,

Respondent.

BRIEF IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI

Petition Fails to State a Case Under the Rules to Justify Issuance of a Writ of Certiorari.

The Petition for Certiorari filed in this case (p. 3, Subdivision II) gives four "Reasons Relied On For Allowance of the Writ". These are:

1. Application for the writ is timely made. This is admitted, but is not a "Reason".

2. The decision of the Circuit Court of Appeals "is in conflict with applicable decisions of the Supreme Court of Florida, construing the Constitution of Florida". This statement is not supported by references to what petitioner considers "applicable decisions".

3. "*The effect* of the decision and judgment is to hold this petitioner liable for the debt of another, and will deprive petitioner of its property without just compensation". Note that this statement refers only to "the effect of the decision and judgment", and is a charge that the decision of the Circuit Court of Appeals violates the Florida and Federal Constitutions. The petition does not show how, nor what, property it is deprived of.

4. That "the foregoing questions, as points of law" were raised and presented in the lower courts. This statement is misleading if it is intended to mean that the pleadings in the lower court, or in the Circuit Court of Appeals, made claim to constitutional rights guaranteed by the Constitution of Florida or of the United States.

The brief supporting the petition does not elaborate or discuss these "Reasons", but (p. 6) states three "Errors" of law which it supports by "Argument". The errors assigned are:

1. That the lower court erred in holding that the City of Largo ever existed, either de jure or de facto.

2. That the lower court erred in holding that the bonds sued on were valid, because no election was held.

3. That the lower court erred in holding that the defendant Town of Largo is the legal successor of the City of Largo.

This summary statement of the "Reasons" and "Specification of Errors" contained in the petition and brief indicates that petitioner evidently assumes that this proceeding is an appeal from what it conceives to be an erroneous decision by the Circuit Court of Appeals. The brief is patently an argument of the merits of the case. It does not even attempt to show why petitioner is entitled, under the rules of this Court, to have its *petition* granted. Petitioner

has misconceived the object of a petition for Writ of Certiorari to this Court and the rule of this Court that governs the granting of the same. Writs of Certiorari from this Court are not granted to review decisions of the lower court "merely to settle matters of private interest", *Forsyth v. City of Hammond*, 166 U. S. 506, 41 L. ed. 1095, nor to give the party defeated in the court below another appeal, *Magnum Import Co. v. Coty*, 262 U. S. 159, 67 L. ed 922.

Rule 38 of this Court provides that it "will be granted only where there are special and important reasons therefor". None of the situations described in that rule as illustrations of the "character of reasons" which control the granting of petitions by this Court exists in this case, and neither the petition nor the brief contains any statement that can be construed as a "special and important reason" unless it be the unsupported statement in the second "Reason" in the petition "that the decision of the Circuit Court of Appeals is contrary to the decisions of the Supreme Court of Florida construing the constitution of that state".

Even if it be admitted that since the decision of this Court in *Erie Railway Company v. Tompkins*, 302 U. S. 671, 82 L. ed. 518, a decision by a Circuit Court of Appeals contrary to the decisions of the Supreme Court of the state in which the case arose is a "special and important reason" which would justify granting of a petition, it is necessary that the petition or the brief should make an affirmative showing that there is a conflict. The petition does not point out what decisions of the Florida court conflict with the decision of the Circuit Court of Appeals. The decisions of the Florida court referred to in the "Argument" (p. 6 et seq.) in the brief, are the very same decisions of the Florida court which are cited and relied upon by the Circuit Court of Appeals as authority for its decision. The Court will also note that both petition and brief omit even a reference to the decision of the Florida Supreme Court in *State v. City of Cedar Key*, 122 Fla. 454, 165 So. 672, which is specifically cited by the Court of Appeals. A casual perusal of

that opinion will show that the Florida Supreme Court there affirmed the issuance of a writ of mandamus against the City of Cedar Key, despite the fact that the Florida court had previously entered a judgment of ouster against the corporation on the ground that its charter was void for the same reasons which it gave to sustain a similar decision that the charter of the City of Largo was void. The *Cedar Key* case has never been reversed or modified. Neither the petition nor the brief seeks to distinguish that case from the present, or contends that it is not controlling here. In so far as the "Argument" in the brief of petitioner may be considered applicable to the second "Reason" (p. 3) it may be summarized as merely the unsupported opinion of counsel in contrast with the opinion and decision of the Circuit Court of Appeals expressly stating that it is based solely upon the authority of the decisions of the Florida Supreme Court. It is also noticeable that the brief refers to decisions of the Florida Supreme Court in *Winter Haven v. Klemm, et al*, 132 Fla. 334, 181 So. 153 (p. 7) and *State v. Pompano*, 113 Fla. 246, 151 So. 485, but makes no reference to the later decisions of the Florida Supreme Court in *Winter Haven v. Klemm* and *Klemm v. Winter Haven*, 192 So. 646 and 652 respectively, and *State v. Pompano*, 136 Fla. 730, 188 So. 610, which are contrary to petitioners claim. These later cases are cited in the footnote to the opinion of the Circuit Court of Appeals.

Though it may not be necessary to discuss the "Errors" assigned in the brief (p. 6) unless a writ should be issued, they are so lacking in merit that we briefly state our position with reference thereto.

1. That the City of Largo did exist de facto, if not also de jure, is sustained by the decisions of the Supreme Court of Florida in *State v. Cedar Key*, supra, and *Winter Haven v. Klemm*, supra.

2. That the bonds were valid obligations is demonstrated in a threefold manner.

First: Because, as the Stipulation (pp. 32-33) shows, two of the three issues of bonds involved in the suit were validated before they were issued, by a decree of the Circuit Court dated April 29, 1926.

Second: Because all three issues of bonds were validated by two special acts of the legislature of Florida. Bonds dated May 15, 1925 were validated by Chapter 11588, Acts of 1923, and all three issues were validated by Chapter 12995, Acts of 1927. That act even declared that "all acts of the City Commission and other officers of said City with reference to the authorization, issuance, sale and delivery of said bonds, the payment of all expenses connected therewith, and all other acts and proceedings had or taken in reference thereto, be and the same are hereby ratified, validated and confirmed and said bonds are hereby declared to be general, direct, valid and binding obligations of said City of Largo". This legislative declaration was added to the judicial declaration of the validation decree.

Third: The bonds recite on their face that they were issued, not solely under the charter act, as brief of petitioner states, but, as they themselves recite, "pursuant to and in strict compliance with the Constitution *and the Statutes of the State of Florida and among others*" the charter act of the Town. If there was any valid statute of the State of Florida under which the bonds could be issued, this recital is conclusive.

The only ground upon which the validity of the bonds is attacked is because no election of freeholders was held in accordance with the provisions of the charter of the City. The Supreme Court of Florida in *State ex rel. Havana State Bank v. Rhodes*, 115 Fla. 259, 151 So. 289, held on the authority of earlier decisions of this Court that "behind a recital of acts and proceedings importing validity of negotiable county or municipal bonds, a bona fide holder for value is not bound to look, except for legislative authority",

and "so it is that the corporate existence of the issuing authority cannot be attacked if at the time of the issuance of the securities it had a de facto existence and acted as an authorized legal entity, whether it actually was or not". In *Board of Public Instruction for Dade County v. State*, 121 Fla. 702, 164 So. 697, it held that, since the principal purpose of a validation decree is to put in repose questions of fact which exist dehors the face of the bonds, the decree of validation "put in perpetual repose" the question of whether or not an election had been held and had resulted favorable to the issue of the bonds.

Since the Constitution did not require approval of the issue by an election as a condition precedent, it was within the power of the legislature to ratify and validate the bonds, even though no election was held, *Middleton v. City of St. Augustine*, 42 Fla. 287, 29 So. 421.

Chapter 6458, Acts of 1913, Sections 3016-17 and 3020-21 C. G. L. 1927, and Chapter 9298, Acts of 1923, Sections 3022-3042 C. G. L. 1927, both authorize all cities and towns in Florida to issue "Improvement Bonds" against assessments, without holding an election of freeholders. Both acts state that they are supplemental and additional methods for financing the cost of such improvements and that they are available to any city regardless of the provisions of any city charter. Both of these acts authorize the issuance of "Improvement Bonds", to secure the payment of which special assessments levied on abutting properties are pledged, without requiring approval of the issue at an election. Prima facie, all of these bonds were issued under the authority of one of these two statutes.

3. The third "Assignment of Error" is an unsupported argument that the Town is not successor to the City "in fact and in law". But the Stipulation (p. 31 et seq.) *admits facts* that prove that the Town is and has been functioning as successor to the City, and that it claims to be exercising jurisdiction de jure, as well as de facto, over a part of the

area which was formerly within the City. The decision of the Circuit Court of Appeals that the Town is successor to the City follows other decisions by that court in *City of Uvalde v. Spier*, 91 F. 594, *City of Lampasas v. Talcott*, 94 F. 457, *City of Sour Lake v. Branch*, 6 F. (2d) 355, and *City of South Houston v. Carman*, 6 F. (2d) 358, all of which were predicated upon the decisions of this Court in *Broughton v. City of Pensacola*, 93 U. S. 266, 23 L. ed 896, *Port of Mobile v. Watson*, 116 U. S. 289, 28 L. ed. 620 and *Shapleigh v. San Angelo*, 167 U. S. 644, 42 L. ed. 310. The last cited case is closely parallel in fact, because in that case the charter of the city had been held void in an action in quo warranto for the same reasons assigned by the Florida court for holding void the charter of the City of Largo, and the new town included a portion of the area of the one declared void.

Neither the petition nor the brief attempts to distinguish these cases from the case in hand. Petitioner's argument rests solely upon its assumption that the charter of the City having been held void, no one is now liable, a position contrary to both law and equity.

Respectfully submitted,

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T. M. SHACKLEFORD, Jr.
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